

EXHIBIT D

Declaration of John D. McKay

1 Timothy R. Titolo, Esq.
2 Nevada Bar No. 003617
3 TITOLO LAW OFFICE
4 9950 West Cheyenne Ave.
5 Las Vegas, Nevada 89129
6 (702) 869-5100
7 tim@titololaw.com

8 John D. McKay, Esq.
9 *Admitted pro hac vice*
10 PARK AVENUE LAW LLC
11 127 W. Fairbanks Ave. No. 519
12 Winter Park, Florida 32789
13 (434) 531-9569
14 johndmckayatty@gmail.com

15 *Attorneys for Plaintiffs*

16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

PETER DELVECCHIA, *et al.*,

Plaintiffs,

vs.

FRONTIER AIRLINES, INC., *et al.*,
Defendants.

Case No: 2:19-CV-01322-KJD-DJA

**DECLARATION OF JOHN D. MCKAY
PLAINTIFFS' MOTION FOR AN
ORDER TO SHOW CAUSE WHY
FRANCOIS OBASI SHOULD NOT
BE HELD IN CONTEMPT OF COURT**

I, John McKay, make the following Declaration pursuant to 28 U.S.C. §1746:

1. I am lead counsel for Plaintiffs in the above-captioned action.
2. On December 12, 2019, I was present at Titolo Law Office in Las Vegas, Nevada with my client Peter DelVecchia, attorney for Defendants Brian Maye, a Court Reporter working for Esquire Deposition Solutions, and a videographer also working for Esquire Deposition Solutions, beginning at 10:00 a.m. Pacific Standard Time, for the noticed deposition of

DECLARATION OF JOHN D. MCKAY

1 witness Sgt. Francois Obasi of the Las Vegas Metropolitan Police Department (LVMPD).

2 Although I was informed that Sgt. Obasi had been served on December 4, 2019 with a Rule
3 45 subpoena commanding his attendance at the deposition on that date and at that time, he did
4 not appear.

5
6 3. Based on a service copy that I received, it is my understanding that Defendants served their
7 own Cross-Notice of Deposition for the same date and time, and that they also served Sgt.
8 Obasi with a Rule 45 subpoena, by certified mail.

9
10 4. Sgt. Obasi and I spoke on the telephone later in the day on December 12, 2019. My
11 recollection of that conversation that occurred over two years ago is somewhat vague, and I
12 did not take any notes, but I believe that he apologized for not appearing but did not indicate
13 any circumstances beyond his control that prevented him from complying with the subpoena.

14 5. At the time that I spoke with Sgt. Obasi in December, 2019, I was not yet aware that he may
15 possess certain information that Plaintiffs need for the prosecution of their case. I was not
16 made aware of Sgt. Obasi's connection to that information until this year.

17
18 6. After I became aware in 2022 of Sgt. Obasi's likely possession of that information, I decided
19 that Plaintiffs needed to re-notice his deposition. On March 3, 2022, I drafted and served on
20 opposing counsel an Amended Notice of Deposition to take his deposition on March 16, 2022
21 at 10:00 a.m., a date that counsel had agreed was available for depositions. Due to continuing
22 concerns about the COVID-19 pandemic, I noticed the deposition to occur via Zoom. I put
23 language in the Amended Notice stating that Sgt. Obasi needed to contact me or Plaintiffs'
24 local counsel, Timothy Titolo, upon receipt of the Notice to provide a valid email address so
25 that a Zoom link could be emailed to him.
26
27
28

- 1 7. After serving the Amended Notice on opposing counsel, I sent it to Mr. Titolo's office and
2 asked his assistant, Debbie Fowler, to arrange for service of the Amended Notice and a Rule
3 45 subpoena on Sgt. Obasi through a local process server.
- 4 8. Ms. Fowler informed me on March 4 that attempted service on Sgt. Obasi at LVMPD had
5 been unsuccessful because someone at LVMPD informed the server that Obasi was no longer
6 employed at LVMPD.
- 7 9. Ms. Fowler arranged for a skip trace and informed me on March 4 that she had learned of a
8 residence address for Mr. Obasi. She arranged for service to be re-attempted at that residence
9 address, and she informed me later that evening that Mr. Obasi had been served at his
10 residence.
- 11 10. On March 5, Mr. Titolo sent me an email informing me that Mr. Obasi had left him a
12 voicemail message. He attached an audio file containing the message to his email. I listened to
13 the message, in which Mr. Obasi confirmed that he had received the subpoena, stated that he
14 is now retired and prefers to be called "Mister" rather than "Sergeant," and provided a phone
15 number and an email address.
- 16 11. I have made several attempts to call the phone number that he provided in the message. On
17 each attempt, the call failed to connect. After placing the call, the line beeped three times and
18 disconnected. I do not know why that occurred, but it has repeated without change on
19 numerous attempts between March 5 and today.
- 20 12. I also sent several emails to Mr. Obasi asking him to call me. All were sent to the exact email
21 address that he provided in the voicemail message referenced above, and none was bounced
22 back to me. At 8:05 a.m. Pacific Daylight Savings Time on March 16, 2022, I emailed Mr.
23 Obasi the Zoom link for the deposition and the Meeting ID and Password. The subject line of
24
25
26
27
28

1 that email read: "ZOOM LINK FOR DEPOSITION TODAY." The email did not bounce
2 back.

3 13. On March 16, 2022, at 10:00 a.m. Pacific Daylight Savings Time, the Zoom session
4 commenced. Present (virtually) in addition to me were Peter DelVecchia, Brian Maye
5 representing all Defendants, a Court Reporter working for Esquire Deposition Solutions, and
6 a videographer working for Esquire Deposition Solutions. Mr. Obasi failed to appear.
7 Everyone present waited for fifteen minutes for him to appear, but he never did. I tried calling
8 his phone with the same result described above. I sent him an email stating that we were all
9 waiting for him to join via the Zoom link and indicating that we would seek contempt of court
10 sanctions if he did not appear by 10:15.
11

12
13 14. After waiting until 10:15, the court reporter made a record of his failure to appear, and the
14 Zoom session was terminated.

15 15. Mr. Obasi has never provided me with an excuse for his failure to appear.

16 16. On March 5, 2022, I sent an email to Mr. Obasi informing him of Plaintiffs' intent to file a
17 Motion for an Order to Show Cause and also informing him of the Court's meet and confer
18 requirement for motions related to discovery. I asked him to contact me. Seven days have now
19 passed since I sent that email, and he has never called me or otherwise responded to the email.
20

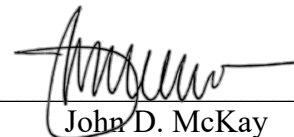
21 17. Based on bills from Esquire Deposition Solutions and LV Process and Investigations, LLC
22 that I have reviewed, Plaintiffs have incurred a total of \$1,575.80 in costs directly related to
23 service of the two subpoenas described above and the Court Reporter and videographer
24 charges for the two aborted depositions. I have reviewed the itemization of those costs
25 contained in the accompanying Motion, and it accurately reflects the charges that were
26 contained in the invoices.
27
28

1 18. I have expended a total of 15.1 hours of my professional time preparing for the two
2 depositions at which Sgt./Mr. Obasi failed to appear, collecting the relevant invoices,
3 discussions with Mr. Titolo and Ms. Fowler concerning Mr. Obasi, conducting legal research
4 on contempt motions in this Court and the Ninth Circuit databases, drafting the Motion,
5 drafting this Declaration, preparing the Exhibits to the Motion, and filing the Motion and all
6 Exhibits. I hereby authenticate the information contained in the Motion. Regarding the
7 itemization of my time contained in the Motion, I confirm that I reviewed and edited the
8 itemization and that the fees contained in it are reasonable.

10 19. I have been retained in this case on a 40% contingent fee basis. My normal hourly rate for
11 cases requiring aviation expertise is \$575 per hour. I have been litigating cases in federal
12 court since 1985. Over the course of my career, I have litigated and tried numerous civil rights
13 cases brought under Title VII and 42 U.S.C. §1981, both for plaintiffs and defendants. Those
14 have included other cases where an airline was the defendant. Since 2011, I have limited my
15 practice to aviation-related matters, with only a few exceptions made for longstanding
16 business clients.

19 I declare under penalty of perjury that the foregoing is true and correct.

20 Executed on April 12, 2022.

24
25
26
27
28

John D. McKay